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SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 135th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 19 November 1992, at 3 p.m.

Chairman: Mr. VOYAME

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.135 and that of the third part (public) appears as document CAT/C/SR.135/Add.2.

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Supplementary report of the Libyan Arab Jamahiriya (CAT/C/9/Add.12) (continued)

1. At the invitation of the Chairman, Mr. Hafyana and Mrs. Markhus (Libyan Arab Jamahiriya) took places at the Committee table.

2. Mr. HAFYANA (Libyan Arab Jamahiriya) said he would reply to the questions raised by members of the Committee, beginning with those put by Mr. Sorensen, Country Rapporteur.

3. Libyan judges were subject to a special judicial system which was different from that applicable to other members of the civil service. Under that system, conditions of recruitment for judges were based on age, competence and qualifications. Judges were appointed by the General People's Committee and could be sanctioned or revoked for violation of the rules governing their functions, or for incapacity in general, following an investigation and on the decision of the Ministry of Justice. Judicial investigation therefore made it possible to evaluate the competence of judges at all levels and to decide upon promotions. The presidents of courts were assisted by a number of advisers whose competence was ensured on the basis of the same system. Judges were remunerated in accordance with a special scale. The age of retirement was 65 or after 35 years in office. Judges were independent since the independence of the judiciary was guaranteed; they were therefore subject only to the law of the land.

4. Libya's judicial system was based on the principle of accusation and defence. The members of the Department of Public Prosecutions were selected during the People's Congress. The various types of court were as follows: civil and criminal courts, administrative courts, and personal status courts. The hierarchy of judges in Libya was as follows: judges of first instance, judges of second instance, presidents of courts of first instance, presidents of courts of second instance, vice-presidents of the Court of Appeal, judge of the Court of Appeal and president of the Court of Appeal. The Supreme Court, which was the highest court of justice in Libya, comprised a number of civil, criminal and administrative departments. It could hear motions for annulment or appeals against judgements handed down in the civil, criminal or administrative courts. The Supreme Court had the power to annul laws if they were found to be unconstitutional; it therefore played the role of a constitutional court.

5. It had been asked whether a complainant could request the public prosecutor to bring a public action on his behalf, and he explained that a provision of that kind existed in criminal law, enabling the complainant to submit a complaint to the Department of Public Prosecutions if the case involved an offence in respect of which the action had to be brought by the complainant. As regards crimes involving torture, article 435 of the Penal Code provided for sanctions against a public official who ordered a subordinate to commit torture or who did so personally, regardless whether the

victim had filed a complaint or not. According to article 1 of the Code of Criminal Procedure, the only body competent to bring a public action was the Department of Public Prosecutions, except when the injured party or the Minister of Justice alone were empowered to do so.

6. The Rapporteur had asked whether all Libyan citizens could bring an action for the crime of torture and he explained that, in his country, recourse to justice was based on the interest of the complainant. That interest in the case in question was to punish the guilty party and to obtain compensation under the relevant legislation. In that connection he referred to the existence of the People's Court which heard cases involving questions of guarantees of fundamental freedoms and human rights.

7. The period for which a person found guilty of torture was imprisoned was left to the discretion of the judge, but the minimum statutory period was three years. Up to seven years' imprisonment was possible for more serious violations.

8. He recalled that the functions of the Attorney-General were described on page 5 of the report and noted that any person who considered that he had been tortured could submit his complaint directly to him. The complaint was then transmitted to the Department of Public Prosecutions or to one of the special courts of the district where the act had taken place, and the Attorney-General was required by law to prosecute the accused.

9. The Rapporteur had also asked whether the victim had to wait for the trial to end before being compensated, whether persons found guilty of torture were obliged to pay such compensation, and whether a large number of requests for compensation had been submitted. He explained that there were two systems of compensation, according as requests for compensation were handled by the criminal courts or were the subject of an independent action in a civil court. It was for the victim to choose the course that was the more favourable to him. If the person found guilty of torture was a civil servant, damages were paid by the State. He did not at the present time have any reliable statistics on the number of requests for compensation or the number of cases of torture reported to the authorities. He also recalled that Libya had a Law on the Promotion of Freedom and Protection of the Family. Article 14 of that law stated that no person could restrict the freedom of a citizen, search or question him except on the orders of a competent authority or if he was accused of a punishable offence.

10. With respect to police custody, he explained that provision had to be made for the place of custody and that the family of the suspect had to be notified as rapidly as possible. Any decision restricting the freedom of a citizen must be taken by the competent judicial authorities within the time-limit specified by law. The period of police custody could not exceed 24 hours. The suspect was then brought before the court, after which he was either released or charged. In the case of particularly serious crimes, the investigation was conducted in secret and the family of the suspect was not informed of his pre-trial detention. Other countries had similar provisions. In such cases the accused was entitled to the services of a lawyer; if he lacked the necessary means the State had to assign one to him.

11. In reply to a further question from the Rapporteur, he said that the accused had the right to remain silent if he saw fit to do so. His motives for deciding not to talk might well be questioned however - perhaps he was trying to cover up the role he had played in the offence in question or was trying to protect his rights.

12. The maximum period for which the accused could be held before being brought before a judge or a court was calculated from the exact time of his arrest, and depended on the nature of the offence. For minor offences and misdemeanours he was not arrested; only his statement was taken down and his identity and place of residence checked. He was then ordered to pay a fine. In the case of an offence punishable by imprisonment, he could not in any case be held in police custody for more than 24 hours from the time of his arrest. Once he had made his statement, he was brought before the competent court. The Department of Public Prosecutions took cognizance of his statement within 24 hours, after which he was released if there was insufficient proof. On the other hand, if there was enough proof against him, the Department of Public Prosecutions could extend his detention up to six days for purposes of the investigation. If the investigation was completed within those six days the accused was brought before the court. If the investigation had not been completed, the order to extend his detention was referred to the judge; in its explanatory argument, the Department of Public Prosecutions gave its reasons for wishing to extend the period of detention and described the nature of the offence and the various stages of the investigation. The judge could then either release the accused or extend the period of his detention, since he had discretionary power in the matter.

13. In the case of crimes, a preliminary investigation was carried out by the Government Procurator's Office with a view to collecting all necessary proof. The period of pre-trial detention was then 24 hours, after which the accused was referred to the Department of Public Prosecutions which was responsible for the investigation and which had the right to extend the period of detention up to six days from the date on which the accused was referred to it. At the end of that period, the investigating magistrate referred the case to the Indictment Division, which was then responsible for taking any decision to extend the period of detention.

14. Another question had been raised concerning the attitude of the Libyan State to a request submitted by another State for the extradition of one of its own citizens or a political refugee, in the knowledge that such action might expose the person concerned to torture. Under article 9, paragraph 5, of the Libyan Penal Code, the extradition of a criminal was prohibited if his offence was of a political or similar nature, namely, a criminal offence which was prejudicial to the political interests of the State or the political rights of an individual, or which was politically motivated. Since the Convention against Torture was applicable to Libya, a political refugee or a person likely to be tortured could not be extradited.

15. Economic crimes punishable by death, as defined in article 4 of the Law on Economic Crimes, included deliberate sabotage, by any means whatever, of production facilities, petroleum installations or related facilities, of any public body of special importance, or of any warehouse containing raw materials or consumer goods. The extreme severity of the penalty, which was

not necessarily capital punishment, was explained by the seriousness of the acts - that could not be likened to petty theft or fraud, for which the punishment was proportional to the offence - which constituted attacks on crucial installations connected with petroleum production, that was vital to the national economy, or with other commodities or consumer goods indispensable to society.

16. Referring to the possibility of appealing to the Committee against Torture, he explained that any accused person had the right to invoke one of the provisions of the Convention against Torture before the courts; and even more to submit a complaint to the Committee; nevertheless, that question had yet to be examined in detail and clarified. The person could submit a complaint to the Department of Public Prosecutions or the body responsible for the investigation, specifying why he was appealing to the Committee. It should be borne in mind that any detainee, regardless of who he was, enjoyed all necessary guarantees under domestic legislation. When a State acceded to the Convention against Torture and accorded international instruments precedence over domestic law, the provisions of the Convention had the force of law in its territory. Dissemination of information about the substance of the Convention was the task of the Committee and States parties, and would require patience and good will on the part of all.

17. Referring to the questions raised by Mr. Burns, Alternate Rapporteur, he said that if a foreigner engaged in acts of torture he would be tried in accordance with Libyan legislation, in Libyan courts and in the light of the provisions of the Convention against Torture, since it had been ratified by Libya. Libya had not concluded any extradition agreement with foreign States concerning torture. Extradition agreements covering criminals had, however, been concluded in the framework of the Arab League, and specifically between Tunisia and Libya.

18. The Penal Code stated that preventive measures could be imposed only in accordance with the law and within the limits specified by the law. Such measures depended on the seriousness of the case. The Libyan Penal Code authorized preventive measures only when the seriousness of the criminal act had been established. Article 136 indicated the nature of the offenders to whom such measures could be applied, namely, recidivists, professional criminals and perpetrators of heinous crimes. Only the judge could decide whether a preventive measure should be imposed after he had verified the gravity of the facts. Such measures could not be abrogated. At the end of the period provided for, the accused was brought before the judge who decided whether the measure should be maintained; if so, it was extended for a further specific period. If the reasons for taking such preventive measures ceased to be valid before the expiry of the time-limit, the judge could abrogate them.

19. The General People's Congress consisted of the secretaries of the basic people's committees and the secretaries of trade unions and professional congresses. The members of the General People's Congress were therefore not appointed but selected directly by the people throughout the entire Jamahiriya. The General People's Congress consisted of 3,000 representatives and had a secretariat comprising a Secretary-General, a Deputy Secretary-General and three other members. The basic people's congresses were constituted at the local level and comprised the local inhabitants; they

discussed everything to do with the life of the community and Libyan society as a whole. Each one had a secretariat consisting of a secretary and four other members. All citizens of both sexes of 18 or over who had never been convicted of any offence, misdemeanour or crime could be members of the basic people's congresses without any restriction or discrimination whatever. The Jamahiriya had 1,500 basic people's congresses.

20. Referring to the criterion used to distinguish between good and evil, he explained that, as in any society, it depended on the philosophy underlying legislation; the purpose of any policy on criminal matters and any penal system was to encourage the good in society and to eliminate evil. The philosophy behind punishment was deterrence.

21. It had been asked whether the Libyan legislation in force dealt with questions involving torture and whether the Penal Code contained provisions on torture. He explained that the Penal Code contained no specific provisions concerning mental torture, although anyone engaging in such practices would be punished under existing legislation because of its underlying spirit; article 14 of the Law on the Promotion of Freedom was one example. The question was also covered in the legal provisions applied by the Department of Public Prosecutions and the courts. He was unable to say at the present time whether Libyan courts gave interpretations of physical or mental torture; torture was not defined in Libyan law although it was punishable under various legislative instruments which left it up to the victim to bring an action before the courts to seek redress.

22. Nowhere in Libyan legislation or the Penal Code was there any reference to forced labour but rather to internment with hard labour or imprisonment with hard labour; labour was a secondary punishment supplementing the main one. The term "forced labour" might be an error of translation.

23. Mr. Dipanda Mouelle had asked in what cases action could be brought through the Ministry of Justice. Article 224 of the Penal Code provided for that possibility in the case of the crimes referred to in article 167 (foreign plots intended to undermine Libya's military, political or diplomatic position), article 168 (acts of aggression against a foreign country likely to jeopardize the Libyan State), article 175 (political defeatism), article 177 (economic defeatism in time of war), article 178 (activities undertaken abroad by Libyans against national interests) and article 181 (purchase of defective weapons or munitions).

24. The sanctions that could be imposed under the Libyan Penal Code were capital punishment, life imprisonment, internment, prison and fines; others included deprivation of civil rights for a specific period, prohibition to exercise a profession and deprivation of legal status. Capital punishment was carried out in the prison itself or in other closed premises pursuant to the request of the Attorney-General after stating that the provisions of article 435 of the Penal Code concerning amnesty had been respected. The close relatives of the condemned person could meet him, but not at the place of execution. If his religion required that he should confess himself, for example, he was allowed to do so. One of the Attorney-General's assistants as well as the prison Director and doctor were present at executions. The

indictment and the grounds for the judgement were read out to the condemned person in their presence, and a record of the execution was drawn up once death had been established medically.

The meeting was suspended at 4.20 p.m. and resumed at 4.35 p.m.

25. Referring to the question of extradition, he said it was his belief that Libyan legislation reflected all the requirements of article 3 of the Convention. If certain points were not covered by that legislation, the judge would refer to article 3 of the Convention which was enforceable in Libya.

26. A proper understanding of the situation as regards crimes liable to capital punishment was impossible without taking into account the fact that Libya had become a generally open country and that all Arab citizens could enter and leave it freely; indeed, Arab citizens could move freely between the Persian Gulf and Morocco. There was also free movement of persons between Libya and neighbouring African countries. The fact that, in 1989, 93 foreign nationalities had been represented in Libya inevitably created various problems of delinquency and violence. Four murderers had recently been sentenced to death. The first had been found guilty of rape accompanied by threats of violence, the murder of his victim and the dismemberment and mutilation of the body. The second had raped and burnt his victim. The third had been found guilty of luring his victim into a trap, murdering and dismembering the victim, placing the pieces in a refrigerator for two months, and stealing money from the victim's attaché case. Lastly, the fourth person condemned had murdered his spouse, sequestered his children - who had died of thirst and hunger - and stolen the victim's jewellery and money. The general tendency was to restrict the application of capital punishment to a limited number of crimes. It had been alleged that executions took placed in public and were shown on television; that was not so. There was a weekly television programme devoted to justice and security which informed the public of problems connected with criminality and made it aware of offences connected with drug use and trafficking, for example. During that programme reference had been made to the crimes committed by persons condemned to death as well as to capital punishment, but the executions had not been shown; they had been carried out inside the prison. As in many other countries, discussion concerning the abolition of capital punishment was continuing in Libya, but no conclusions had been reached. He would transmit to the Committee a list of the death sentences that had been handed down.

27. Referring to Mr. El Ibrashi's question concerning the rules of justice and equity he emphasized that, as was stated in the report, the legality of a law or of one of its provisions was determined by the courts in the light of the rules of justice and equity. In the purely theoretical case where a law as a whole would be regarded as being contrary to the rules of justice and equity, the judge could request its abrogation. However, more often than not it was a provision that was abrogated as being not in conformity with the rules of justice and equity. Any citizen who considered himself injured by a legislative enactment could appeal to have it set aside because of irregularity. He could also appeal on the grounds that a certain legislative enactment was contrary to the Convention against Torture.

28. Offences were classified on the basis of the way in which they were punished: a distinction was made between misdemeanours punishable by a fine, offences punishable by detention and offences punishable by imprisonment. The examining magistrate investigated all cases referred to him. He could also delegate an official of the Department of Public Prosecutions to investigate a specific case or specific incident, in which case that official had the same powers as the examining magistrate. The period of pre-trial detention was six days but could be extended on decision of the Department of Public Prosecutions. Under the law, any person who had been charged could be assisted by a lawyer; the court itself designated a lawyer where necessary.

29. Amnesty, both general as well as individual, removed the criminal taint of the offence committed and expunged the punishment. If a person had committed a large number of offences, only those listed in the amnesty order were pardoned. An individual amnesty was granted either in respect of a specific crime or a particular person.

30. As for the authorities empowered to arrest suspects and the bodies responsible for conducting enquiries and investigations, he explained that preliminary investigations were carried out by a legally-qualified official of the Department of Public Prosecutions. The record of the investigation was then transmitted to the Attorney-General. Bodies responsible for legal proceedings were independent of those that handed down judgements.

31. In reply to Mr. Ben Ammar, who had requested further details about the competence of the Peoples' Court referred to in the report, he explained that its purpose was to promote freedom; it was competent to hear appeals against measures or decisions prejudicial to the freedom and basic rights of citizens. It was also statutorily competent to hear cases connected with individual freedoms that the person concerned or victim had not, for one reason or another, referred to the judicial authority. It was also empowered to rule on the validity of the election of members of the General People's Congress. Its competence was therefore quite different from that of the civil, criminal and administrative courts.

32. Human rights teaching was provided in the schools and in particular in the law faculties of universities. Ways of instructing police and medical personnel in human rights matters were under discussion, for obviously such instruction was necessary since the Convention was being applied in Libya.

33. Libya had contributed in the past to the Voluntary Fund for Torture Victims. The Libyan authorities would examine the desirability of establishing a special centre for the rehabilitation of torture victims.

34. Replying to the questions raised by the Chairman, he said that the Islamic courts heard only cases connected with civil status, marriage, divorce, the custody of children, the payment of alimony, etc. Rules had been drawn up to settle cases of conflict of jurisdiction. Referring to the application of article 11 of the Convention, he said that the possibility of allowing external bodies to visit Libyan prisons was still being studied. He confirmed that any form of torture, whether physical or mental, was prohibited. Detention decisions were taken by the competent judicial authority on the basis of evidence and proof.

35. Lastly, in reply to a question from Mr. Dipanda Mouelle concerning the effects of the air embargo imposed on Libya by the international community, he said it had created a number of practical difficulties. For example, it now took 48 hours to travel from Tripoli to Geneva instead of 2 hours and 20 minutes previously, the prices of consumer goods had increased and certain shortages were being experienced. He regretted that that embargo, which was unfair, had been imposed and took the liberty of considering Mr. Dipanda Mouelle's question as an expression of sympathy with the Libyan people.

36. In conclusion, he reaffirmed Libya's determination to conform to the Convention, particularly in submitting reports, and added that the Libyan authorities were prepared to cooperate with the Committee and provide it with any information it might desire, as well as to reply to all its questions, subject to respect for national sovereignty.

37. The CHAIRMAN thanked Mr. Hafyana for giving the Committee a better understanding of the unique institutions of the Libyan Arab Jamahiriya. He invited the members of the Committee to discuss their conclusions in a closed meeting.

38. The Libyan delegation withdrew.

The first part of the meeting (public) rose at 5.15 p.m.